

In re) Fair Hearing No. 9406
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

1. The petitioner is a 47-year-old woman who is a high school graduate. Her only work experience in the last 15 years has been 18 months as a kitchen aide in a nursing home.

2. At this time, one adult child still lives at home with the petitioner. The petitioner claims she is unable to perform her prior work for a variety of reasons, including headaches, a swollen ankle, seizures, arthritis and backache.

She is taking medication for her seizures but takes only

Tylenol for her headaches and nothing for her arthritis. The petitioner apparently did not seek medical treatment for her physical problems from 1974 through at least late 1988 although she was covered by Medicaid until July of 1988 as an ANFC recipient.

3. A psychiatric evaluation done on the petitioner in December, 1989 concluded that the petitioner had no major psychiatric disorder but did exhibit dependent personality traits which limited her ability to function well during crisis situations. She was mildly anxious but not depressed. She was found to have a good memory, average intelligence, appropriate mood and affect, intact cognitive functions, adequate judgement, fair insight, an ability to abstract and be a logical and coherent historian. It was, however, "his impression that this patient has little actual ability to work. Her physical complaints impair her ability to function in a job setting she has skills for, such as in a kitchen or cooking situation, and I imagine her dependent traits would escalate in times of crisis or pressure leaving her even less able to function. Thus, although she can superficially take care of herself it's unclear to me whether she could actually function in a regular work setting."

A form which accompanied his report checked off boxes showing the petitioner to be "markedly" (severely) impaired in her ability to maintain attention and concentration for

extended periods, to perform within a schedule, maintain regular attendance and be punctual within customary tolerances and her ability to work with and not be distracted by others. She was found to be moderately limited with regard to understanding and remembering very short and simple instructions and detailed instructions, the ability to carry out detailed instructions, to sustain an ordinary routine, to make simple-work related decisions, to complete a normal workday, to interact appropriately with the general public, to get along with co-workers and to respond appropriately to changes in the work setting.

4. Her physician's report, dated December 18, 1989, showed that she has a normal physical exam on May 30, 1989, and that her blood pressure and seizures were controlled by medication. (Her last grand mal seizure was over 15 years ago.) A mammogram had revealed some abnormalities but a biopsy on August 14 showed no malignancy. He noted that she complained of "occasional" headaches, "occasional" low back soreness and "occasional" achy and swollen left ankle but he saw nothing on exam to obviously explain these problems and guessed that her ankle ache might be the residual effects of an old fracture and varicose veins. It does not appear that he prescribed any treatment for that problem. He stated that "I see no limitation in her ability to do a job involving sitting, standing, walking, lifting, carrying, bending, handling objects, seeing, hearing, speaking and traveling. Her intelligence level struck me as being low

normal, so there might be problem (sic) with clear understanding and remembering and carrying out instructions. Other than that, I see no physical limitation to her being able to work. Her chart shows that her seizure problem is not an active one, being well controlled on the Dilantin."

5. The petitioner reported both in a written form to DDS and to the psychiatrist that she spends her mornings doing housework and can accomplish all tasks except for moving heavy articles in about 3 1/2 hours. At hearing, she revised that figure to 8 hours with frequent long breaks. She does her own cooking and shopping and because she does not have a driver's license she walks on a daily basis to visit with friends or her mother, although her feet start to swell and her back aches after a while. At hearing, she stated that it takes her a long time to do that walking (30 - 40 minutes) whereas she used to do it in 10 minutes and that she only goes 3 times per week where as she formerly reported daily trips. She continues to watch TV, read books and do crossword puzzles and embroidery in her spare time, although her fingers sometimes cramp up and she gets a low backache after sitting for a while. She states that she has not had a seizure for 15 years but that her medication makes her drowsy. Although she reported to her doctor that her headaches were controlled by Tylenol she now says they are not and that she worries a lot about lack of money. She also claims that her ankle swells even when she's sitting down.

6. The medical records show that the petitioner took part in mental health counseling for several months in 1988 due to problems she had controlling one of her children. It was noted at that time that the petitioner appeared to suffer from a dependent personality disorder which affected her judgement and insight. It was noted that "[petitioner] ends up somatizing the stress and is having numerous physical symptoms."

FINDINGS OF FACT

Based on the above evidence, the following proposed findings of fact are made:

1. The age, educational and experiential information set out in Paragraph 1 above are found as facts.

2. The petitioner is found to suffer from occasional headaches, high blood pressure and seizures which are controlled by medication, and occasional ankle swelling, lower back aches and joint stiffness, none of which pose any significant limitation on her ability to sit, stand, walk, lift, carry, bend, handle objects, see, hear, speak or travel. Although the petitioner testified to significant limitations on these abilities, that testimony is found to be not credible because it conflicts with information she supplied earlier to DDS and is unsupported by the findings of her treating physician.

3. The petitioner is found to suffer from dependent personality traits which have not been shown to

significantly affect her ability to perform any work related tasks, including memory, sustained concentration and persistence, social interaction and adaptation. The mental residual functional capacity assessment form filled out by the consulting psychiatrist which indicates certain marked deficiencies as set out in Paragraph 3 above are rejected because they are inconsistent with the psychiatrist's own findings (that she was of average intelligence, had a good memory, appropriate mood and affect, adequate judgement and insight was logical and clear); because they are unsupported by any evidence of record either clinical or practical which would indicate that the petitioner had or was likely to have problems in the listed areas in a work setting to the extent that she could not hold a job as a result; and because they are largely based on a belief in the petitioner's report of physical problems which was not borne out by the evidence. (The petitioner herself made no claim with regard to these mental restrictions.) The psychiatrist's own best assessment of possible future problems presented by her dependent traits was that it was "unclear".

ORDER

The department's decision is affirmed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to

result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The petitioner has no physical impairments which singly or in combination significantly affect her ability to perform the physical tasks required in her past job.

Neither is there any psychological impairment which singly or in combination with the physical deficits has been shown to interfere significantly with her ability to understand and remember directions, use judgement, keep on tasks, perform well, get along with others and deal with changes.

20 C.F.R. § 416.920(a). While the petitioner may genuinely believe she can't do her former job, that belief appears to be more a lack of confidence than any real restriction. As such it must be found that the petitioner can return to her former job as a kitchen aide and is not disabled. 20 C.F.R. § 416.920(c) and (e).

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